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OCT 10 1990

Federal Communications Commission  
Office of the Secretary

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

KAGAN MEDIA PARTNERS, L.P. )  
and )  
EQUITABLE CAPITAL MANAGEMENT )  
CORPORATION )

Petitions for Declaratory )  
Ruling Concerning )  
Application of the )  
Multiple Ownership Rules )  
and Alien Ownership )  
Limitations to Limited )  
Partners in Certain Public )  
Limited Partnerships )

MM Dkt. 92-51

MMB File No. 900924A

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REPLY COMMENTS  
OF  
EQUITABLE CAPITAL MANAGEMENT CORPORATION

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October 10, 1990

### SUMMARY

For the reasons stated herein, and in view of the strong public support of significant commenters, the Federal Communications Commission (the "Commission") should grant the request by Equitable Capital Management Corporation ("ECMC") that the Commission declare that the limited partners of each of four substantially identical public limited partnerships of which ECMC is the managing general partner are adequately insulated from involvement in the management or operation of their media investments so that the "multiplier" can be used in order to determine compliance with the alien ownership limitations of Section 310(b) of the Communications Act of 1934. In addition, ECMC also urges the Commission to grant the companion request by Kagan Media Partners, L.P. ("KMP") that the Commission declare KMP's limited partners are sufficiently insulated to the extent that they will not be deemed to hold an "attributable" interest in KMP's media investments for purposes of the Commission's multiple ownership rules. We believe that the public interest will be served if the Commission now considers expeditiously the matters specifically presented by the ECMC and KMP requests, and proceeds to address separately in another appropriate forum the issues raised by the comments of Sacramento RSA Limited Partnership.

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CERTIFICATE OF SERVICE

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REPLY COMMENTS  
OF  
EQUITABLE CAPITAL MANAGEMENT CORPORATION

Equitable Capital Management Corporation  
("ECMC"), by its attorneys, hereby submits its reply  
comments pursuant to the Commission's Public Notice, dated  
August 17, 1990 (DA 90-1098) (the "Notice"), with respect  
to the above-referenced matter. For the reasons set forth  
in its Petition for Declaratory Ruling and, in view of the  
strong public support of significant commenters, ECMC's  
ruling request should be granted.

I. Background

The Notice seeks comment on the above-referenced  
separate petitions for declaratory rulings filed by Kagan  
Media Partners, L.P. ("KMP") and ECMC. ECMC and KMP both

seek rulings concerning the applicability of the Commission's insulation criteria to certain publicly offered, widely-held limited partnerships which, because of the requirements of federal and state securities laws, generally must provide certain voting rights to limited partners and are, therefore, unable to satisfy all the criteria used by the Commission to determine whether limited partners are sufficiently "insulated" from a partnership's media affairs.<sup>1</sup> Specifically, KMP seeks a ruling that its limited partners are sufficiently insulated to the extent that they will not be deemed to hold any "attributable" interest in KMP's media investments for purposes of the Commission's multiple ownership rules.<sup>2</sup> ECMC seeks a ruling that the limited partners of four substantially identical public limited partnerships<sup>3</sup> of which it is the managing general partner

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1. See Reexamination of the Commission's Rules and Policies Regarding the Attribution of Ownership Interests in Broadcast, Cable Television and Newspaper Entities, 97 F.C.C. 2d 997 (1984), on reconsideration, 58 Rad. Reg. 2d (P&F) 604 (1985), on further reconsideration, 61 Rad. Reg. 2d (P&F) 739 (1986).

2. 47 C.F.R. § 73.3555.

3. Equitable Capital Partners, L.P., Equitable Capital Partners (Retirement Fund), L.P. (together, the "Equitable Capital Partners I Partnerships"), Equitable Capital Partners II, L.P. and Equitable  
(continued...)

are sufficiently insulated from involvement in the management of the Partnerships' media investments so that a "multiplier"<sup>4</sup> can be used to determine each partnership's level of alien ownership for purposes of the alien ownership limitations of the Communications Act of 1934 (the "Communications Act").<sup>5</sup>

## II. All Commenters Supported ECMC's Request

The Notice invited comment from all interested parties. In response, comments were received from ML Media Partners, L.P. ("ML Media") and Sacramento RSA Limited Partnership ("Sacramento"), both fully in support of ECMC's request. ML Media Comment, at 10; Sacramento Comment, at 4. No commenters opposed ECMC's request.

ML Media is in full agreement with the position expressed in the ECMC request. In particular, ML Media

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### 3. (...continued)

Capital Partners (Retirement Fund) II, L.P. (together, the "Equitable Capital Partners II Partnerships," and collectively with the Equitable Capital Partners I Partnerships, the "Partnerships").

4. See Request for Declaratory Ruling Concerning the Citizenship Requirements of Sections 310(b)(3) and (4) of the Communications Act of 1934, as amended, 58 Rad. Reg. 2d (P&F) 531, 541 n.52 (1985) [hereinafter, "Wilner & Scheiner"], on reconsideration 1 F.C.C. Rcd. 12 (1986).

5. 47 U.S.C. § 310(b). See also 47 C.F.R. § 22.4.

states that it is appropriate to use the multiplier in situations where the limited partners of publicly offered, widely-held limited partnerships, such as those which are the subject of ECMC's request, possess certain voting rights required by federal and state securities laws but are otherwise uninvolved in the media-related activities of the limited partnership. ML Media points out that the limited partners of such partnerships are the functional equivalent of minority stockholders in corporations. ML Media Comment, at 12. Sacramento also supports ECMC's request, expressing the view that it is "particularly" important to grant ECMC's request in order to reiterate the "flexibility" the Commission stated it would exhibit with regard to the insulation of limited partners for purposes of Section 310(b)(4) of the Communications Act in Wilner & Scheiner. Sacramento Comment, at 4-5. In view of the strong public support represented by these significant commenters, the Commission should grant ECMC's request.

### III. ECMC Fully Supports the Request of KMP

ECMC fully supports KMP's request that the Commission declare that the limited partners of a public limited partnership who are otherwise "insulated" from the partnership's media activities do not have "attributable"

interests in the partnership's media investments for purposes of the Commission's multiple ownership rules solely because they possess certain limited voting rights mandated by state and federal securities laws. For the reasons set forth more fully in the Petition for Declaratory Ruling of KMP and in the comments of ML Media, ECMC believes that attributing the ownership interests of the very large number of individual limited partners (who are essentially the equivalent of minority shareholders in large public corporations) holding interests in public limited partnerships would do nothing to further the goals of the Commission's multiple ownership rules.

IV. The Commission Should Grant ECMC's Request Without Reaching the Collateral Issues Raised by Sacramento

Sacramento, in addition to supporting ECMC's request, also asks that the Commission "take the opportunity afforded by the KMP and ECMC petitions to reaffirm the flexibility it called for in Wilner & Scheiner with respect to the limited role the attribution guidelines play in assessing the applicability of Section 310(b) to a [closely-held] limited partnership with an alien limited partner." Sacramento Comment, at 16-17. Sacramento contends that the instant proceeding is an appropriate forum for addressing the applicability of



Section 310(b) to closely-held private limited partnerships, such as Sacramento, because it involves "similar issues." Sacramento Comment, at 9. ECMC, without expressing any view with regard to the substantive merits of Sacramento's request, believes that the issue raised by Sacramento is entirely collateral to that specifically presented in this proceeding (i.e. the application of the Commission's attribution rules to the otherwise insulated limited partners of widely-held public limited partnerships which are required by federal and state securities laws to afford limited partners certain voting rights), and urges the Commission to consider the issues raised by Sacramento separately in another, more appropriate, forum.

V. Conclusion

ECMC, by its attorneys, respectfully requests that the Commission proceed to declare that the limited partners of each Partnership are adequately insulated from involvement in the management or operation of such Partnership's media investments so that the "multiplier" can be used in order to determine compliance by each Partnership with the alien ownership limitations contained in Section 310(b) of the Communications Act. ECMC also fully supports the request for a related ruling submitted

by KMP and urges the Commission to grant the relief requested. ECMC respectfully submits that, because there are presently several thousand public investors in the Equitable Capital Partners I Partnerships and other similar public limited partnerships that wish to invest in media properties, the public interest would be served if the Commission proceeds expeditiously to grant ECMC's ruling request.

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Dated: October 10, 1990

**CERTIFICATE OF SERVICE**

I, Marcia L. MacHarg, do hereby certify that I have on this 10th day of October 1990, served by first class U.S. mail, postage prepaid, a copy of the foregoing "Reply Comments of Equitable Capital Management Corporation" on the following:

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